

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DOE #1, an individual, JOHN
DOE #2, an individual, and PROTECT
MARRIAGE WASHINGTON,

Plaintiffs,

v.

SAM REED, in his official capacity as
Secretary of the State of Washington,
DEBRA GALARZA, in her official
capacity as Public Records Officer for the
Secretary of State of Washington,

Defendant.

Case No. 09-CV-05456-BHS

DECLARATION OF TOBY NIXON

TOBY NIXON declares as follows:

1. I am the President of the Washington Coalition for Open Government
("WCOG"). I am over the age of 18 and otherwise competent to testify to the matters
herein. I testify to these matters based upon my personal knowledge.

DECLARATION OF TOBY NIXON - 1

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0300
(509) 624-5265

1 2. WCOG is an independent, nonpartisan, nonprofit organization dedicated to
2 promoting and defending the public's right to know in matters of public interest and in
3 the conduct of the public's business. WCOG is the key freedom of information
4 association in Washington, and Washington citizens' representative organization on the
5 National Freedom of Information Coalition. Its mission is to help foster the cornerstone
6 of democracy: open government processes supervised by an informed and engaged
7 citizenry. WCOG represents a cross-section of the Washington public, press and
8 government. Attached hereto as Exhibit "A" is a true and correct copy of WCOG's
9 Board of Directors.
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13 3. WCOG takes an active role, both in the legislative process and in
14 significant Washington State Court of Appeals and Supreme Court decisions through
15 *amicus curiae* briefs, in promoting access to open government and records, be they in
16 the public domain or in the court system. It has filed 13 such briefs from 2007 to date.
17

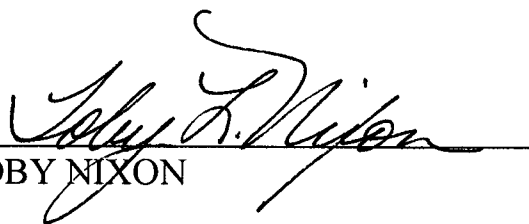
18
19 4. On July 31, 2009, I sent an email request to Brenda Galarza, Public
20 Records Officer for the Office of the Secretary of State, State of Washington, for copies
21 of "all signed petition pages for Referendum 71" under Washington's Public Records
22 Act, RCW 42.56., *et. seq.* Attached hereto as Exhibit "B" is a true and correct copy of
23 the e-mail I sent on July 31, 2009 to Brenda Galarza.
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1 5. Later that same day, Ms. Galarza informed me that, due to the Temporary
2 Restraining Order entered by this Court, she could not provide the requested records.
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4 Attached hereto as Exhibit "C" is a true and correct copy of the e-mail I received from
5 Ms. Galarza on July 31, 2009.

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7 6. As a practical matter, this Court's resolution of the temporary restraining
8 order will directly and permanently impact WCOG's request for access to these public
9 records. Moreover, the Court's construction of the Public Records Act will have a
10 significant influence on public records issues throughout the State of Washington which
11 will effect WCOG's members.

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13 7. No party currently before the Court adequately represents the scope of
14 WCOG's interest in providing access to records for all citizens of Washington State and
15 ensuring faithful adherence to the Public Records Act and constitutional safeguards to
16 open government access.

17
18
19 8/5/09 Wenatchee, WA
20 (Date and Place)


TOBY NIXON

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2009,

1. I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within action. I am employed by the law firm of Witherspoon, Kelley, Davenport & Toole, 422 W. Riverside Avenue, Suite 1100, Spokane, Washington.

2. On the 27th day of August, 2009, I caused to be served upon the parties via the USDC ECF filing system, the following documents as set forth below:

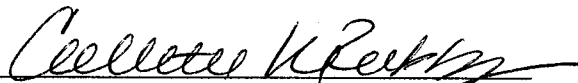
Declaration of Toby Nixon; and

Certificate of Service.

Stephen Walter Pidgeon – attorney@stephenpidgeon.com,
vramirez@ryanlaw.com

Kevin Bay – bay@ryanlaw.com, jacobson@ryanlaw.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Collette N. Robbins, Legal Assistant